

FOREIGN CLAIMS SETTLEMENT COMMISSION  
OF THE UNITED STATES  
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

SELDEN & COMPANY, INC.

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU - 1190

Decision No. CU 367

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by SELDEN & COMPANY, INC., in the amount of \$115,840.75 plus interest, based upon the asserted loss of payment for merchandise shipped to Cuba.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized,

expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 502(1) of the Act defines the term "national of the United States" as "(B) a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity."

An officer of the claimant corporation has certified that the claimant was organized in the State of New York and that at all times between February 28, 1948, and presentation of this claim on March 23, 1967, more than 50% of the outstanding capital stock of the claimant has been owned by United States nationals. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

Claimant states that all of its eight stockholders are nationals of the United States.

The record contains copies of claimant's invoices and accounting records reflecting the sale to customers in Cuba of goods, the remaining unremitted balance upon which is \$115,840.75, itemized as follows:

<u>INVOICE NO.</u>	<u>INVOICE DATE</u>	<u>CUSTOMER</u>	<u>AMOUNT</u>
257-59	October 29, 1959	Central Salvador, S.A.	\$ 6,877.25
328-59	December 3, 1959	Central San Agustin, S.A.	28,570.00
361-59	December 15, 1959	Muniz y Garcia Sacos, S.A.	3,505.70
362-59	December 15, 1959	N. American Sugar Co.	42,485.75
372-59	December 24, 1959	Cuban American Bag Co.	2,348.00
6-60	March 10, 1960	Cuban American Bag Co.	10,665.47
14-60	March 14, 1960	Cuban American Bag Co.	2,457.65
264-59	November 5, 1959	Cuban American Bag Co.	4,163.60
276-59	November 9, 1959	Central Salvado, S.A.	2,482.51
338-59	December 8, 1959	Cia. Azucarera Mayabon, S.A.	70.37

(continued)

339-59	December 8, 1959	Muniz y Garcia Sacos, S.A.	\$ 70.74
409-59	February 1, 1960	American Agricultural Chemical Company	324.40
434-59	February 23, 1960	Cia. Agricola Indarra, S.A.	1,096.50
(none)	-----	Selden & Company, Inc.	2.31
320-59	November 30, 1959	J. Arrechavala	<u>10,720.50</u>
		TOTAL	<u>\$115,840.75</u>

The record also contains correspondence and status reports of 1963 from the Royal Bank of Canada of Montreal, concerning its attempts to collect the drafts for the aforementioned merchandise sold by claimant, and a listing, prepared by claimant of payments made in local currency to the collecting bank in Cuba, which listing has been verified both by the Royal Bank of Canada, Havana Branch, and the Administrator of the Banco Nacional de Cuba, as follows:

<u>INVOICE NO.</u>	<u>AMOUNT PAID</u>	<u>DATE PAID</u>
257-59	\$ 6,877.25	2/7/60
264-59	4,163.60	1/15/60
276-59	2,482.51	2/21/60
320-59	10,720.50	12/10/59
328-59	28,570.00	1/4/60
338-59	70.37	2/15/60
339-59	70.74	2/15/60
361-59	3,505.70	1/18/60
362-59	14,083.98	2/5/60
	14,129.30	3/30/60
	14,272.47	3/10/60
372-59	2,348.00	1/7/60
409-59	324.40	4/4/60
434-59	1,096.50	6/7/60
6-60	10,665.47	3/16/60
14-60	2,457.65	4/13/60
Draft 93701	<u>2.31</u>	7/15/60
	<u>\$115,840.75</u>	

Claimant states that it has not received the funds.

The Government of Cuba, on September 29, 1959, published its Law 568, concerning foreign exchange. Thereafter the Cuban Government effectively precluded not only transfers of funds to creditors abroad, but also payment to creditors within Cuba, by numerous, unreasonable and costly demands upon the consignees, who were thus deterred from complying with the demands of the Cuban Government. The Commission holds that Cuban Law 568 and the Cuban Government's implementation thereof, with respect to the rights of the claimant herein, was not in reality a legitimate exercise of sovereign authority to regulate foreign exchange, but constituted an intervention by the Government of Cuba into the contractual rights of the claimant, which resulted in the taking of American-owned property within the meaning of Section 503(a) of the Act. (See the Claim of The Schwarzenbach Huber Company, FCSC Claim No. CU-0019; and the Claim of Etna Pozzolana Corporation, FCSC Claim No. CU-0049).

Accordingly, in the instant claim the Commission finds that claimant's property was lost as a result of intervention by the Government of Cuba and that, in the absence of evidence to the contrary, the loss occurred on February 8, 1960 as to \$6,877.25, on January 16, 1960 as to \$4,163.60, on February 22, 1960 as to \$2,482.51, on December 11, 1959 as to \$10,720.50, on January 5, 1960 as to \$28,570.00, on February 15, 1960 as to \$70.37, on February 16, 1960 as to \$70.74, on January 19, 1960 as to \$3,505.70, on February 6, 1960 as to \$14,083.98, on March 31, 1960 as to \$14,129.30, on March 11, 1960 as to \$14,272.47, on January 8, 1960 as to \$2,348.00, on April 5, 1960 as to \$324.40, on June 8, 1960 as to \$1,096.50, on March 17, 1960 as to \$10,665.47, on April 14, 1960 as to \$2,457.65, and on July 16, 1960 as to \$2.31, the dates following payment to the collecting bank in local currency.

The Commission has decided that in payment of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be allowed at the rate of 6%

per annum from the date of loss to the date of settlement (See the Claim of American Cast Iron Pipe Company, FCSC Claim No. CU-0249).

CERTIFICATION OF LOSS

The Commission certifies that SELDEN & COMPANY, INC., suffered a loss as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of One Hundred Fifteen Thousand Eight Hundred Forty Dollars and Seventy-Five Cents (\$115,840.75) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

Dated at Washington, D. C., and entered as the Proposed Decision of the Commission

OCT 4 1967

*Edward D. Re*

Edward D. Re, Chairman

*Theodore Jaffe*

Theodore Jaffe, Commissioner

*LaVern R. Dilweg*

LaVern R. Dilweg, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g) as amended, 32 Fed. Reg. 412-13 (1967).)

CERTIFICATION

This is a true and correct copy of the decision of the Commission which was entered as the final decision on 18 NOV 1967

CU-1190

*Francis M. ...*  
Member of the Commission